

CAPITAL PROJECTS ADVISORY REVIEW BOARD

**John L. O'Brien Building
504 15th Avenue, Hearing Room A
Olympia, Washington
July 13, 2006
9:00 AM**

Final Minutes

<u>MEMBERS PRESENT</u>	<u>REPRESENTING</u>	<u>MEMBERS ABSENT</u>	<u>REPRESENTING</u>
Gerald "Butch" Reifert	Design Industry	Rep. Dan Kristiansen	House of Representatives (R)
Rocky Sharp	Specialty Contractor	Sen. Dave Schmidt	Senate (R)
Ed Kommers	Specialty Contractor	Sen. Phil Rockefeller	Senate (D)
Carolyn Crowson	OMWBE		
John Lynch (Chair)	General Administration		
Rodney Eng	Cities/Counties/Ports		
Michael Mequet	Cities/Counties/Ports		
Larry Byers	Insurance/Surety Industry		
Daniel Absher	General Contractor		
David Johnson	Construction Trades Labor		
Olivia Yang	Higher Education		
Dan Vaught	School District Project Rvw Bd		
Nora Huey	Cities/Counties/Ports		
Kathy Haigh (Vice Chair)	House of Representatives (D)		
Wendy Keller	Public Hospital Project Rvw Bd		

STAFF & GUESTS

Nancy Deakins, GA	Devin Lee
Searetha Kelly, GA	Tom Peterson, Hoffman Construction
Cheri Lindgren, Puget Sound Meeting Services	Paul Berry, CMAA
Pam Johnson OST	Darlene Septelka, King County
Dick Goldsmith, AWPFD	Ginger Eagle, WPPA
Larry Stevens, MCA/NECA	Gary Baldasary, Washington State Ferries
Diane Smith, Senate	Charlie Brown, King County Schools Coalition
Tom Balbo, AGC	Debbie Gaetz, WCIC
Terry Tilton, Construction Trades Labor	Julie Sexton, WSAC
Marsha Reilly, OPR	

Welcome & Introductions – Chair's Comments

Chair John Lynch called the Capital Projects Advisory Review Board (CPARB) meeting to order at 9:08 a.m. He reported on the recent appointment of the fourth legislative member to CPARB, Representative Dan Kristiansen. Representative Kristiansen will attend the next meeting on August 10, 2006.

Everyone present provided self-introductions.

CPARB FINAL MINUTES

JULY 13, 2006

Page 2 of 13

Ms. Deakins referred to a July 5, 2006 letter from the Metropolitan King County Council expressing concerns about the guarantee on the maximum allowable cost under General Contractor/Construction Management (GC/CM) for the Inpatient Expansion Building at Harborview Medical Center.

Ms. Yang briefed the committee on the issue, as the University of Washington (UW) negotiated the agreement with Turner Construction.

Mr. Absher arrived at 9:13 a.m.

Chair Lynch reported he and Mr. Reifert attended the Architects and Engineers Legislative Council (AELC) meeting on July 11, 2006. A briefing on CPARB activities was provided. Chair Lynch reported he is scheduled to present CPARB issues to the Northwest Construction Consumer Council on July 19, 2006.

Mr. Vaught and Representative Haigh arrived at 9:15 a.m.

A letter dated July 13, 2006 from the Washington State Building and Construction Trades Council was distributed to members. Mr. Johnson explained that one concern is lack of discussion around traditional contracting methods. Priority issues identified by the Trades Council are defining lowest responsible bidder in statute, bid shopping of subcontractors within the construction industry, and exploring best value contracting. It is critical that these issues are brought to the table by CPARB prior to the next legislative session. In the few months remaining prior to the 2007 legislative session, CPARB should review and resolve the bid shopping and lowest responsible bidder issues. Mr. Johnson offered his assistance with the issue.

Chair Lynch replied that CPARB may need to establish a group to address the issues raised by the Trades Council before the session rather than waiting for a future session. Mr. Johnson added that other CPARB members are interested in the same issues. He said he has some suggestions for relatively easy “fixes.” Chair Lynch said the Legislative Advisory Subcommittee might be the mechanism to review the issues.

Approve Agenda

The agenda was approved as presented.

Approval of June 8, 2006 Minutes

Dave Johnson moved, seconded by Rocky Sharp, to approve the minutes of June 8, 2006 as presented. Motion carried.

Legislative Advisory Subcommittee

Chair Lynch reported the Legislative Advisory Subcommittee will “screen” and send issues that will benefit from CPARB review and guidance prior to presentation to the legislature. He identified members of the subcommittee.

Representative Haigh said the legislative subcommittee does not want to take away decision-making authority from the Board on recommendations for legislation. GA has included funding the subcommittee in its base budget request. Representative Haigh said she spoke to the Governor’s Office representatives concerning the importance of ongoing funding. She said she briefed the representatives on CPARB activities. It is important that the subcommittee and Governor’s Office stay in close contact.

CPARB FINAL MINUTES

JULY 13, 2006

Page 3 of 13

Ms. Crowson reported she is working with Antonio Ginatta and the Governor's Policy Office about opportunities for smaller, minority, and women's businesses.

Chair Lynch acknowledged Searetha Kelly and Nancy Deakins for organizing the picnic lunch.

Representative Haigh reported the cost for projects is increasing significantly especially in the transportation area, which is creating a problem for the bidding process. CPARB should be aware of the problem and review rejection bids. Transportation projects are on hold because contractors are not bidding the work.

Ms. Deakins said the Governor vetoed a section of the language that was attached to a purchasing bill. The Governor directed stakeholders to meet and draft language concerning the rejection of all bids. CPARB members might want to weigh in on the issue.

Discussion ensued concerning how receiving a single bid relates to the rejection of all bids. Chair Lynch said there is a provision that allows a public owner to negotiate with the low bidder when all bids exceed the funding level. GA is opposed to rejecting all bids for that reason.

Public Comments

There were no public comments.

Brief Reports from Subcommittees

Data Collection – Darlene Septelka

Ms. Septelka reported GA is developing the web-based project information survey.

Chair Lynch reviewed GA's schedule related to developing the online system.

Ms. Septelka conveyed that school districts will provide pilot data. Previous data will not be collected again. However, additional information on projects completed since the last survey will be solicited from each major agency. The survey will include data for Design Bid Build (DBB) projects in excess of \$10 million, with the flexibility to collect information from projects in the \$8 million range. The schools will provide the best analysis for traditional public works projects and projects completed by GC/CM. The main survey on project data is underway. The subcommittee will meet again in the fall to review the data and assist with drafting a status report to the CPARB.

Ms. Septelka stated she was asked to create a short web-based survey to gather input from the project team (contractor, architect, subcontractor, and owner). She distributed a *Design Bid Build Project Team Evaluation Survey* document that includes three different surveys based on the three different delivery methods. She referred to a one-page *Team Evaluation Survey* and reviewed the format. The subcommittee reviewed the short survey and considered including several more questions about cost, schedule, and owners' requirements. She asked whether CPARB wants to continue with a similar survey.

Chair Lynch said he attended the Data Collection Subcommittee meeting. Members were interested in a short version of the survey with the addition several questions. The information could prove valuable.

Mr. Eng commented that previous surveys have not resulted in equal responses from all sectors of the industry, which is important in terms of value. He said he supports developing a short, one-page survey.

Representative Haigh suggested sending a copy of the survey results to those completing the survey. It lets them know that the time they spent filling out the survey is worthwhile and that the information is useful.

Ms. Septelka said the contractors on the GC/CM side support the survey. The owners are also interested in providing input. There was less response from the design field and subcontractors. The builders and owners are interested and see the value as a final report could affect legislation.

Ms. Keller said the short survey will not take long to complete. A two-page survey is reasonable.

Discussion ensued concerning the need for “drop-down” definition and instruction menus, and baseline comparative data. Ms. Septelka acknowledged a definition page and instructions are needed for the survey, including what’s included in design and construction costs. GA will draft the definitions and instructions for the long survey. Chair Lynch added GA could easily create the team evaluation as long as the survey is short. GA is dedicating a staff person to actively manage the survey. Ms. Septelka explained the survey will not ask for a comparison between Design Build (DB) and GC/CM. However, the initial survey did request a comparison of the project to DBB.

Carolyn Crowson moved, seconded by Daniel Absher, to direct the Data Collection Subcommittee to continue to develop a Team Evaluation Survey limited the survey to two pages. Motion carried.

Ms. Septelka asked members to review the short survey and forward suggestions for additional questions within the next two weeks. Conversation concerning the timeline for the data collection project followed. Ms. Septelka said she will bring the short survey back to CPARB next month so GA can advance developing the database and online system.

Reauthorization of Alternative Public Works – Rodney Eng

Mr. Eng reported the owner and contractor task forces met twice in the last month. The subcommittee met last Thursday. The general consensus of Task Force #1 (Owner) and the subcommittee is to recommend establishing a Project Review Committee (20 to 30 members) to review DB and GC/CM projects. CPARB should appoint the members to the committee. However, a change in the Board’s authority is required. One option is to detail in statute or draft rules the membership of the committee. Another alternative is for CPARB to appoint members recognizing balanced representation is important. Most everyone agreed on the membership, but was not able to come to a decision concerning statutory language. Other issues the task force is struggling with include what projects will require review and what “review” means. Some current owners do not want to go before a Project Review Committee. Mr. Eng said perhaps the committee should just review and comment, and not make a recommendation. Others subcommittee members believe the Project Review Committee should have the authority to approve which projects are completed by which owners. A majority of the task force and subcommittee members believe “review only” is not sufficient.

Mr. Eng reported many of the issues Task Force #3 (Contractor) are addressing are related to matters between the contractors and subcontractors. He referred to a *Reauth Contractors Task Force #3 Issues Log* dated July 6, 2006. Several issues have been resolved while others need further work. Additional subcommittee and/or task force meetings in August and September are necessary unless there are major “breakthroughs” today.

Discussion ensued concerning the concept of a Project Review Committee and how the review board would be set up. Mr. Eng confirmed the underlying philosophy is that the committee would review owners and projects

for both DB and GC/CM, and the statute might completely drop all current requirements for owners. The Project Review Committee would replace the description of qualified owners currently in statute.

Representative Haigh said a critical step is at what point the information comes in. Those that currently have the authority to use GC/CM might be included in the review process and the committee may advise them. Those that do not have authority to use GC/CM are required to go through the approval process. She suggested developing language that speaks to “review and advise” but not necessarily approve if owners are authorized to use GC/CM.

Ms. Yang said higher education proposes to provide the Project Review Committee with real time information so the information is not lost. It reduces the work required by the review committee, as some owners have several GC/CM projects. The information would be sent to the review committee, providing an opportunity for public feedback. Appeal of decisions is still available.

Expansion Subcommittee – Olivia Yang

Ms. Yang reported the Expansion Subcommittee met and conducted a final review of owner criteria/guidelines. The subcommittee did not talk about whether to use the criteria in lieu of the current criteria or if the proposed guidelines would amend the current criteria. Draft legislation from Design-Build Institute of America (DBIA) was reviewed. A conclusion is expected at the August meeting. Proposed legislation covers the following points for DB includes:

1. DBIA proposes including as criteria the schedule and when a project could benefit from multiple designs through design competition. Discussions are ongoing between DBIA and American Institute of Architects (AIA) for resolution.
2. Change from the current Request for Qualification (RFQ)/Best & Final to RFQ and Request for Proposal (RFP).
3. A DBIA representative will redraft the proposed language to describe “honorarium” for the subcommittee’s August meeting.

Related to job order contracting (JOC), Centennial proposed to raise individual work limits to \$500,000. A counter proposal was \$200,000, and \$350,000 was decided with 90% of the work subcontracted. Current legislation is \$150,000 with 80% of the work subcontracted. A topic of discussion was the number of JOC contracts per public body and the total amount of each contract. There was some consensus that the number should be changed from two to three, with a higher limit for public bodies providing JOC services on a regional basis, such as GA. There was strong opposition to not having any limit. Issues scheduled for discussion at the August meeting include:

1. What public owners should be allowed to use the DB procedure?
2. Should the Project Review Committee have the sole determination?
3. What is the minimum size project that qualifies?
4. What word is used to decide project size (value, construction cost, project budget, etc.)?
5. Does the DB procedure allow a public body to procure “operate and maintain” services in addition to construction?

An issue tabled for future discussion concerns DB legislation. It currently allows public bodies to use DB for pre-engineered metal buildings. A question is whether public bodies come before the Project Review Committee for such a use.

Discussion ensued concerning the reasons for raising the work order limit to \$350,000. Representative Haigh said her issue with setting a dollar amount is that the legislature will be asked to raise the limit. An inflation factor should be included, as the requirement to pass legislation to change the limit isn't the most efficient use of the legislature's time.

Chair Lynch said JOC work orders are essentially a DB work order. Most GA projects are straightforward and don't have separate architects or engineers drawing the design. As projects get larger in size, a concern is whether the public is receiving professionally designed facilities. The small works roster limit of \$200,000 is also outlined in statute. Small works roster projects typically don't need a designed drawing.

Chair Lynch recessed the meeting from 10:28 a.m. to 10:47 a.m. for a break.

Review Existing Legislation with Proposed Changes from Subcommittees

Chair Lynch referred to a *CPARB Issues for Legislation* spreadsheet dated July 13, 2006. He emphasized the Board is not taking a final vote on the issues, but forwarding issues for drafting legislation. Members reviewed the issues as summarized below.

- **Clarify definition of eligible projects and owners.** The recommended action is to draft legislation per the Expansion Committee recommendation concerning the six underlined criteria/guidelines attached to the July 7, 2006 report for GC/CM projects. Incorporating the bullet points within an administrative set of procedures is an option. A copy of the subcommittee report will be forwarded to Ms. Smith and Ms. Reilly for purposes of drafting legislation.

A second component of the issue is to clarify the statute definition of minimum project cost. The \$10 million threshold was set in statute 10 years ago and is not defined whether it relates to construction contract amount or project costs. It has been interpreted to mean project cost and does not include costs related to land acquisition or equipment. A question is how project value is defined. DB includes the design cost within the DB contract.

Mr. Eng said most owners apply the \$10 million limit to project costs that excludes land acquisition only. Ms. Keller said regardless of the limit, current considerations allow for smaller rural hospitals to use a lower limit because they fit the general criteria of GC/CM. Public hospitals use the actual construction costs and not design costs and limit the dollar amount related to equipment. Chair Lynch said lowering the threshold could result in a significant expansion of the number of projects the Board sees statewide. Other concerns raised by members include the issue of timing related to choosing a contract method, where to set the line for those that have to go before the committee for approval, and the ability to use GC/CM when a project falls below a specified threshold. Ms. Yang said there is a "natural floor" where a public owner determines a project is not large, valuable, or critical enough that it needs to go through the GC/CM process. A "natural floor" allows owner flexibility. The owner can work hand-in-hand with the contractor. The more flexibility an owner has, the better they can respond to its programs.

Mr. Kommers conveyed that many GC/CM and DB subcontractors would like a threshold higher than \$10 million. When considering inflation, perhaps the cap should be \$20 million. A definition is needed prior to considering a threshold, as "value" is hard to define. He said he would like the project cost to exclude land and financing. Discussion followed concerning whether furnishings and equipment that are part of the building should be part of the project cost, raising the limit from \$10 million to \$15 million with a review process for projects under the ceiling if an owner feels it is appropriate and implications to small rural hospitals if the limit is raised.

Ms. Keller asked if the subcommittee could discuss the issue further. Chair Lynch replied the subcommittee meets again in August, but suggested drafting language as described by Representative Haigh with an increase based on inflation. Ms. Yang said subcommittee discussions have revolved around the \$10 million amount and defining which process an owner goes through. Representative Haigh said the legislation can be drafted without the dollar threshold. The general consensus was to defer the dollar limit to a future discussion.

Ms. Septelka noted the data collection is based on the dollar amount set as determined by the Board, and a decision whether to tie data collection to the limit is necessary.

The recommendation is to draft legislation based on a threshold of the GC/CM process, or take projects to the Project Review Committee based on the total project budget less financing and land acquisition costs. The threshold for DB needs additional subcommittee discussion.

- **A/E part of the GC/CM selection team.** Chair Lynch said a public owner is currently able to select the GC/CM method prior to selecting A/E, and perhaps it does not need to be included in statute. Members discussed whether to send the item back to subcommittee for further discussion, if developing a best practices manual to guide owners is sufficient, and if there are GC/CM selections without the design element. Mr. Reifert said he will present the issue to the design group, and report back to the Board in August. Ms. Yang indicated an alternative is necessary if the A/E element is not included in statute.
- **Centralized approval of eligible projects and owners for GC/CM and DB excludes job order contracting.** Recommended action includes:
 - Project Review Committee will exist.
 - CPARB will appoint members to the committee.
 - Committee will review GC/CM and DB only.
 - Every public entity that currently does not have alternative public works authority will come before the committee.
 - Some form of grandfathered system.

Members discussed a “grandfathered system,” what constitutes an experienced user, and a public owner that has not used GC/CM in the last 10 years is not considered an experienced user. Mr. Eng said there are approximately 10 cities authorized to use GC/CM; however, only three have used the method. The remaining cities exhibited a strong reaction related to removing the ability to use GC/CM. Some cities have gone through the process and determined not to use it and feel that it is just as valuable and important compared to those that have used the process.

Discussion continued about whether it’s onerous for an owner to come before the Board, if there is agreement concerning a grandfathered system, and that there appears to be a preference that all public agencies go through the process followed. Chair Lynch asked if the proposal is to create a single system for all owners that would include approval. Several members indicated that is the case. Owners authorized to use GC/CM would not need approval, but could come before CPARB and present the project proposal and seek advisement. Chair Lynch asked if advising rather than approving would meet owner needs, or whether approval is an important component. Mr. Absher replied approval or non approval is a legal question yet to be debated. He said he doesn’t believe there is consensus. It is difficult to give consent based on entity needs. He said it is not clear at this point what the public owners are suggesting that the Board “consent” to.

Dick Goldsmith, Association of Washington Public Hospital Districts, said public hospitals are authorized but choose to go through the review board process. Most hospital owners are not sufficiently sophisticated to make the determination whether the GC/CM process should or should not be used. The input from the Board is valuable.

Mr. Vaught conveyed the school district intends to also use the review board process.

Julie Sexton, Washington State Association of Counties, agreed with Mr. Absher. She suggested the Board submit a proposal for discussion. A few meetings ago during the \$10 million threshold discussion, the issue of floors and a limited number of projects for new owners under \$10 million were discussed. Ms. Sexton offered to help draft a proposal. Chair Lynch agreed with her idea and said it would be helpful to have a proposal for the Board's next meeting. He requested draft legislation include a grandfathered system, with an attempt to define what that means for contractor, subcontractor, and design industry review.

Ms. Septelka said a common delivery point for all projects is key for data collection.

Larry Stevens, MCA/NECA, said that on a historical note concerning "grandfathering," it is important to remember that when the process was created many years ago, there was debate about who would receive GC/CM authority. Following that, others received authority in a number of other ways. Chair Lynch responded a goal is to clean up the "hodge-podge."

Chair Lynch recessed the meeting from 11:40 a.m. to 1:03 p.m. for a lunch break.

Continue Reviewing Existing Legislation

Chair Lynch recapped the Board's input concerning the third issue, "centralized approval of eligible projects and owners for GC/CM and DB excludes job order contracting" as follows:

- Project Review Committee will exist.
- CPARB will appoint members to the Project Review Committee.
- Committee will review GC/CM and DB only.
- Every public entity proposing to use GC/CM or DB will come to the Project Review Committee
- Some form of grandfathered system.
 - A \$10 million threshold under which all projects are reviewed exclusive of financing or land acquisition costs.
 - Define experienced users and those already authorized in statute to use alternative public works.
 - Everyone will submit project information to CPARB in order to collect data on all projects and owners.
 - The difference between experienced and all others is if a project is above a dollar threshold, the experienced users will not have to obtain approval to move the project forward, but will submit the project for review and comment. Subcommittees will discuss this further.

Ms. Huey said the owners could draft language for review at the subcommittee level, keep everyone informed of the progress, and discuss the language at the next CPARB meeting. A concern is the reauthorization and/or expansion subcommittees will not see the language again for another month and Ms. Sexton has offered to help craft the language.

Discussion followed about Ms. Smith and Ms. Reilly needing to be involved via e-mail or fax once the draft is ready. Chair Lynch added the draft could be sent to all members prior to the August meeting.

Paul Berry, CMAA, said Stan Bowman drafted legislative language concerning the establishment of the Project Review Committee and structured it in a fashion that the included “grandfather” versus “non-grandfather.” Mr. Berry suggested revisiting Mr. Bowman’s work rather than starting from scratch. Ms. Deakins said a copy of Mr. Bowman’s language is included in member’s packets.

- **Mandatory training for public agencies – widen eligibility of owners and number of projects (Expansion Subcommittee).** Mr. Eng said the reauthorization subcommittee has not addressed the issue. Some existing owners have discussed training in general, but wouldn’t say the training was “mandatory,” or limited to public agencies. Chair Lynch said CPARB will review “qualified owner” to include whether they are experienced and trained. The Board should be able to screen out someone who is not trained or experienced. Discussion ensued concerning who raised the issue, that “experienced owner” is included in the eligibility criteria, which satisfies the underlying concern, and whether to eliminate mandatory training for public agencies from the issue. An idea was to develop an outreach program for city, county, and port organizations. The Board decided the issue warranted further subcommittee work.

Terry Tilton, Construction Trades Labor, arrived at 1:17 p.m.

- **Job order contracting – expansion of the number of contracts; increase in the dollar amount of individual work orders.** Chair Lynch asked if CPARB should change the eligibility for using JOC to include everyone or whether to retain the same levels currently in statute. If the definition for alternative public works owners is removed and JOC is not required to come before the committee, JOC is open to any public entity in the state. Mr. Eng said not all owners are able to utilize JOC. Previous discussions turned to interlocal agreements where GA would have a number of regional JOCs that small entities could use. Chair Lynch commented the school districts were authorized to use JOC a few years ago. Out of 300 school districts only one has put a JOC in place. Mr. Eng said entities entering in the interlocal would have to be able to utilize JOC on their own. Chair Lynch said an option for GA to have the authority to implement convenience contracts for use by any public agency. Discussion followed related to specifying another dollar threshold and separating the bills.

Ms. Reilly referred to drafting difficulties related to separating the bills. Mr. Eng said JOC was brought in as a separate piece in 2001. He said he is unsure if there is much overlap in the definition section. A question is whether a public hearing is required for JOC with separate legislation. Chair Lynch suggested including the language in Chapter 39.10 and, if necessary, discuss later how to separate legislative bills.

Discussion followed concerning objections to opening JOC up to all public entities statewide if the dollar threshold is solved. Mr. Kommers said from a specialty contractor perspective, opposition will emerge, but he said he’s unable to articulate the objections at this time. Mr. Absher asked if there are public entities that want JOC. Chair Lynch replied JOC contractors are pushing the issue. Smaller state agencies would rather have a regional contract compared to a central contract. He said he is not aware that public agencies are conveying that they need JOC contracting. GA could make use of additional JOC contracts. Mr. Eng said the City of Seattle has found the current work order limits do not make JOC an attractive option. If the work order limits are changed, Seattle is interested in pursuing JOC. Chair Lynch conveyed that GA’s average work order is approximately \$50,000. Ms. Crowson said it

would be nice to expand JOC but there needs to be some fairness to bidding at the subcontractor level. Ms. Deakins pointed out subcontractors don't bid JOC.

Following further discussion, the Board recommended drafting the following into legislation:

- Consider a strategy and the definitions with separate bills for GC/CM and DB.
- All public bodies are authorized to use JOC, with the assumption that use of JOC will be facilitated for smaller jurisdictions through interlocal agreements with a larger entity such as GA, or cooperative effort between a group of smaller jurisdictions.
- JOC contractor will rotate use of subcontractors and include MWBE subcontractors.
- Individual work order limits raised to \$350,000 with 90% of work subcontracted.

Ms. Tilton asked if the language includes the open bidding process. Chair Lynch replied not for subcontractors.

- **MACC contingency incentive prohibition (do not use percentage of the MACC for incentive payments to GC/CM).** Chair Lynch noted the subcommittees agreed and recommended adopting the task force recommendation. Ms. Deakins will e-mail the June 30, 2006 pdf document to bill drafters.
- **Timing for setting of the MACC (change to 90% of construction documents).** Chair Lynch said the recommended action is to adopt the task force recommendation to set the MACC not before 90% of construction documents production. Ms. Yang noted for the record she would like to understand other associated language around bidding and awarding packages. Discussion ensued concerning the status of the recommended language and conceptual agreement. Ms. Deakins and Ms. Kelly will forward language to Ms. Reilly.
- **Uniformity in use of MACC contingency.** Chair Lynch said use of the contingency is connected to what the guarantee means in GC/CM. The suggestion is not to draft statute language for the issue.
- **Unforeseen market conditions.** Mr. Eng noted that the issue is solved through the tentative agreement related to the setting of the MACC. Representative Haigh said the Board could work closely with the Governor's Office and utilize available budget resource information to convey changing market conditions to construction and private entity organizations. Chair Lynch said CPARB could review relevant data and provide advice or suggestions to the Office of Financial Management (OFM). As an example, the current inflation factor is currently too low, but OFM is reluctant to change it. He asked if the change to setting the MACC at 90% takes care of the issue in terms of what is proposed for legislation. Mr. Absher and Mr. Kommers agreed that the unforeseen market conditions issue is addressed with the setting of the MACC. Discussion of defining "guaranteed maximum" followed.
- **Change order administration: a., response time; b., percentage markups.** Mr. Kommers reported the Task Force 2 subcommittees are working on several drafts for response time for change orders. He referred to the issues log dated July 6, 2006, paragraph "071-1o." Percentage mark ups and those details with change orders are not being discussed. Chair Lynch asked how response time should be addressed. Mr. Kommers replied a suggestion was submitted that Ms. Huey reworked. At issue are public owners who are reluctant to agree to a specific time period. A proposal is claims are deemed denied if not acted on by the owner within 60 days. However, the timeframe has not been discussed in detail by the subcommittees. Chair Lynch suggested forwarding the proposal to Ms. Reilly for drafting purposes. The Board could review the legislative language at the next meeting. Mr. Kommers said the

subcommittees have not settled on a final “version.” Mr. Eng said the subcommittees agree to the “deemed denied” language and suggested leaving the timeframe “blank” to draft the language in bill format. Ms. Huey commented every owner has a different contract time. Mr. Kommers conveyed he will forward what he has to Ms. Reilly. The Board agreed and acknowledged the task force will continue to discuss the controversial language.

- **Standard subcontractor agreement/form.** Mr. Kommers noted there are many items within paragraph “061-8,” as it is difficult to develop a standard agreement/form given the number of public bodies. All need further work, which is detailed in the solution and action columns of the issues log. Mr. Eng said the task force recognizes that developing a standard subcontractor agreement in statute is not going to work. Discussion ensued concerning the status of the various issues. Chair Lynch asked if the Task Force 3 issues in paragraph “061-8” could be “wrapped up” and presented to CPARB in August. Mr. Eng said he doesn’t believe so if it means some level of consensus. Discussion followed on the status of items requiring further work and items that are accepted but needs work as reflected in the issues log. Chair Lynch said it appears the Board will not define a standard agreement in statute at this time. However, there is a number of subcontractor issues the task force is working on that could advance within the next couple of months. He requested the subcommittees convey any serious roadblocks to the Board.
- **Rewrite subcontractor eligibility standards/requirements/qualifications - RCW 39.10.061(a)-(h).** Mr. Eng reported there was discussion about eliminating subcontractor eligibility standards. However, consensus was not reached. He outlined two potential solutions:
 1. Retain the current eligibility standards or make minor corrections to the criteria
 2. Eliminate the criteria and implement a pre-qualification public hearing process and use the criteria that GC/CM proposes to evaluate subcontractors for the packages

Ms. Deakins noted more members favored the concept but not the language. Chair Lynch asked if the current list of elements within the pre-qualification process could be written, or whether there is a strong interest not to pre-qualify subcontractors. Mr. Kommers said the answer is yes to both questions. An overarching issue is the cost of participating in an eligibility process. For many small and medium subcontractors, it costs as much as bidding the job. The general contractors and public owners believe there are areas that warrant an eligibility process. Discussion of the GC/CM public hearing process and criteria followed. The Board determined resolution of the issue requires more discussion at the task force level.

- **General conditions need to be better defined.** Mr. Kommers reported the task force agreed to adopt negotiated support services language. He reviewed the proposed language for statute with the Board. Mr. Eng added that the language describes what is meant by negotiated support services and general conditions; i.e., it doesn’t count towards the 30% cap on GC/CM performed work. It solves the issue related to work distributed to subcontractor packages and subcontractor’s not held accountable for GC/CM responsibilities. Mr. Kommers said the language in paragraphs 5 and 7 define and clarify the intent. Mr. Eng will forward the language – 061-(5) and (7) - as defined in a June 30, 2006 document to Ms. Deakins. Ms. Deakins will forward the file to the bill drafters. Discussion ensued concerning a facilitated meeting where the subcontractors could participate in negotiating the language changes.
- **Elimination of subcontractor listing requirements (39.30.030) from 39.10.061(6) for sub-bids.** Mr. Kommers reported the general contractors or owners raised the issue. The task force has not discussed

the matter. Subcontractors are not opposed to eliminating the requirements from paragraph 6, as its application is very limited. Mr. Eng conveyed that he advocates eliminating the requirements from (6). The Board decided it wants to retain subcontractor listing requirements overall, but not in 39.10.061(6).

Chair Lynch recessed the meeting from 2:35 p.m. to 2:47 p.m. for a break.

Ms. Huey, Ms. Keller, Mr. Sharp, and Mr. Absher left the CPARB meeting during the break.

Continue Reviewing Existing Legislation

- **GC/CM contractor eligibility.** It was noted the Board needs the draft document from Paul Berry. The Board agreed not to recommend statutory language but will respond to the legislative mandate.
- **Standardized RFP selection criteria.** Mr. Berry conveyed that a problem with a standardized set of criteria is that it limits and narrows what is intended to be a flexible process. The Board agreed not to recommend new statute language for this item.
- **Resolution of Expansion Subcommittee issues.** Mr. Eng said the item is a placeholder for issues that need to go before the subcommittee.
- **Mandatory periodic legislative evaluation process of alternative public works.** The Board proposes a new six-year period sunset date.
- **User funded evaluations of projects.** The current approach with data collection addresses the issue.
- **Ongoing data collection and reporting (results of the data collection subcommittee).** Members discussed whether to incorporate language that directs an alternative public works reporting requirement. Chair Lynch asked Ms. Septelka to develop language and send it to Ms. Smith and Ms. Reilly to determine where it goes in statute. Ms. Septelka noted that currently, there is nothing that requires mandatory collection of DBB project information. Mr. Eng said collecting data on DBB could apply to owners as defined in 39.10.
- **School District Issues – address number of projects and proposed legislation in 2006.** The issues were passed in the 2006 session.
- **Owners.** The School Districts' owner issues are covered within owner criteria.
- **Project Types (size, criteria, definition of current criteria, refers to other models).** The issue is covered in project criteria.
- **New alternative public works methods (when sufficient progress in first three issues).** The issue will be discussed in the near future. September 2006 was suggested as a target date.
- **Contractors – expand to use more.** Mr. Eng explained the issue is how to expand eligible GC/CM contractors. The Board already discussed lowering the threshold. However, the issue is whether there is a desire to implement a certification program through education and/or training for GC/CM owners. The Board agreed not to draft statute language, but encourages education and other measures.

CPARB FINAL MINUTES

JULY 13, 2006

Page 13 of 13

- **Draft legislation for review by June 2006.** CPARB acknowledged they will receive more draft legislation in August 2006.

Members discussed the status of industry-wide issues and determined the Board was not ready to comment at this time. Ms. Crowson and Mr. Johnson will evaluate the issues further and staff will bring remaining issues to the Board's attention in August.

Ms. Tilton said the original legislation went beyond GC/CM. Construction Trades Labor wants the issues on the agenda for the upcoming legislative session. Chair Lynch conveyed that Ms. Crowson will follow up with Mr. Johnson concerning the issues and report to the Board next month. He asked other members to also present any other additional issues in August to discuss the next steps.

Adjournment

Chair Lynch adjourned the meeting at 3:08 p.m.

John Lynch, Chair, CPARB

Prepared by Cheri Lindgren, Recording Secretary
Puget Sound Meeting Services